HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

WRIT APPEAL NO. 320 OF 2007

BETWEEN:

N.R. Tirtha

.....Appellant

And

The Depot Manager,
APSRTC, Bodhan,
Nizamabad District & two others

.....Respondents

:: JUDGMENT ::

Counsel for the appellant : Shri V. Narasimha Goud

Counsel for the respondents : Shri V.T.M. Prasad

27th April 2007

Per G.S. SINGHVI, CJ

This appeal is directed against order dated 02.02.2007 passed

by the learned Single Judge in Writ Petition No.1323 of 2007, whereby he declined to interfere with award dated 27.12.2005 made by Presiding Officer, Labour Court-II, Hyderabad (for short 'the Labour Court') in I.D.No. 105 of 2003 in so far as the same resulted in denial of back wages and the benefit of continuity of service to the appellant.

The appellant joined as Driver in the services of Andhra Pradesh State Road Transport Corporation (for short, 'the Corporation') in 1985. In December 1995, he submitted an application to the competent authority of the Corporation for grant of leave on the ground of his own illness. After about two moths, an enquiry was instituted against him on the charge of remaining absent from duty from 17.12.1995 to 27.02.1996. During the pendency of the enquiry, another charge sheet was issued to the appellant on 04.06.1996 accusing him of remaining absent from duty with effect from 17.04.1996. In his reply dated 13.07.1996, the appellant enumerated the details of his ailments and the facts relating to treatment taken by him in different hospitals at Tarnaka, NIMS, Yashoda Super Speciality Hospital, Asian Institute of Gastroenterology and Satya Kidney Centre. However, without giving credence to his reply, the disciplinary authority imposed the penalty of removal from service on the appellant.

The appellant challenged the order of removal by filing an application under Section 2 (A) – 2 of the Industrial Disputes Act, 1947. In the statement of claim filed by him, the appellant referred to the factum of his illness and the treatment taken in different hospitals i.e. NIMS, Yashoda Super Speciality Hospital, Asian Gastroenterology and Satya Kidney Centre etcetera. He also averred that he had undergone open heart surgery and one of his kidneys was removed during the course of treatment. He pleaded that even though the concerned authorities were aware of his illness, extreme penalty of removal from service has been imposed on him.

In the counter filed by the respondents, it was pleaded that the

workman i.e. the appellant herein had not only absented from duty but also did not respond to the notices issued by the Enquiry Officer and show cause notice issued by the disciplinary authority compelling the latter to order his removal from service.

The learned Presiding Officer of the Labour Court considered the pleadings and evidence of the parties and observed that the management of the Corporation had knowledge about the sickness of the petitioner. He further held that the allegation levelled against the appellant could be treated as proved because he had not submitted medical certificate as per the requirement of Regulation 11 of the APSRTC Employees' (Leave) Regulations. The learned Presiding Officer then considered the question whether the penalty of removal from service imposed on the appellant is arbitrary and unjust, answered the same in affirmative and passed award dated 27.12.2005 for reinstatement of the appellant but without back wages and also directed that the intervening period should be treated as 'not on duty'. For the sake of convenient reference, the relevant portions of the award are reproduced below:

> " The unauthorised absence period in the charge is from 17.12.95 to date of charge sheet i.e. 27.2.1996. The finding of enquiry officer is clear that the petitioner filed application for continuation of leave from 17.4.96 to 16.9.96. Therefore, it is crystal and clear that the absence period covered in the charge is in continuation of earlier leave period and it is also undisputed fact that the petitioner was suffering with heart disease. The petitioner filed discharge report issued by the Osmania General Hospital and Medical certificate issued by the Dr. Nageswar Reddy, Asian Institute of Gastro Enterology Medinova Diagnostic Services. The medical certificate issued by Yasoda Hospital dt. 24.8.99 and 8.9.99 established that the petitioner was suffering with heard disease and he underwent open Heart Surgery and he was under the treatment continuously till open heart surgery in the month of September, 1999. The enquiry proceedings were commenced in the year 1997.

The statement of witness was recorded by the enquiry officer on 5.2.1997 and submitted the report on 15.2.97. At that time the petitioner was under treatment. The enquiry officer did not choose to issue paper publication when notices were not served. The enquiry officer had knowledge though available record that the petitioner was suffering with ill health and he was sick before the alleged absence period mentioned in the charge. The Enquiry Officer did not chose to consider the continuation of treatment underwent by the petitioner. More over the absence period covered in the charge dt. 27.2.96 is accepted by the authorities and advised to get treatment in the departmental Hospital, at Tarnaka, Hyderabad an asked to submit sick certificate. The petitioner's irregularity is that he did not submit sick certificate along with extension of leave application. The enquiry officer found guilty of the petitioner for the covered period knowingly that the petitioner applied for sick leave and same was accepted on condition to submit sick certificate. Ex.M3 letter dt.10.7.96 established that the respondent No.1 addressed letter to the Chief Medical Officer, Tarnaka Hospital, APSRTC, Hyderabad informing that the petitioner filed an application for extension of leave as such asked to inform whether the petitioner is eligible for leave under Reg. No. 50 (c) of APSRTC Employees' (Leave) Regulations. It shows that the management had knowledge about the sickness of the petitioner.

As per Reg. 11 of APSRTC Employees' (Leave) Regulations, if any employee unable to attend the duties by reason of illness he shall apply leave or an extension of leave and shall produce the sick certificate within 48 hours of his absenting from duty or expiry of leave. Here in this case, the involved period is in extension of sick leave period. Ex.M3 shows that respondent authorities addressed a letter to the Chief Medical Officer about the medical attendance and sick certificate. Without receiving the report from the Chief Medical Officer, the impugned removal order is passed. However, there is small defect on the part of the petitioner for not producing the medical certificate after expiry of leave. Therefore, the finding of enquiry officer is beyond the period covered in the charge and the period covered in the

charge is already accepted by the management subject furnishing medical certificate. As the petitioner is not submitted medical certificate as per Reg.No.11 the absence is liable to treat as unauthorised till medical sick certificate is accepted.

POINT : 2 In view of the discussion in Point No.1 it is clear from the record that the petitioner was suffering with heart disease and kidney disease and it is also clear from the records submitted by the petitioner that the petitioner underwent Open Heart Surgery and also taken treatment for Gastro Entity and one kidney is removed, therefore the absence is with reason and subsequent to the covered absence period the petitioner filed leave application in continuation of earlier granted leave period. Non production of medical certificate immediate after lapse of sanctioned medical leave is excusable defect as the petitioner was taking treatment in different hospital, Osmania Hospital, Medvin Hospital and Yashoda Hospital. On sympathetic consideration of medical ailment of the petitioner during the covered period the removal order is harsh and it is disproportionate. The petitioner is already out of employment from 13.3.1997 i.e. more than 7 years. Treating the involved period as 'Not on duty' is sufficient. Hence the impugned removal order dt. 13.3.1997 is set aside."

Feeling aggrieved by the denial of back wages and continuity of service, the appellant filed Writ Petition No.1323 of 2007. The learned Single Judge referred to the judgments of the Supreme Court in **U.P. State Brassware Corpn. Ltd. v. Uday Narain Pandey**[1] and **Karnataka Bank Ltd,. v. A.L. Mohan Rao**[2] and held that an award of reinstatement does not necessarily entitle the workman to get back wages. The learned Single Judge also relied on the ratio of another judgment of the Supreme Court in **Surya Dev Rai v. Ram Chander Rai**[3] and held that the award impugned in the writ petition cannot be termed as vitiated by an error of law apparent on the face of the record.

Shri V. Narsimha Goud argued that the award passed by the Labour Court is liable to be set aside to the extent of denial of back wages and continuity of service to the appellant because no reason has been assigned by the learned Presiding Officer for treating the intervening period as not on duty. Learned counsel further argued that the charge of unauthorised absence from duty levelled against the appellant was totally unfounded because he had repeatedly informed the concerned authority of the Corporation about his illness and officers were aware of the fact that he was taking treatment in different hospitals. Shri Goud emphasized that after having accepted the fact that the appellant had undergone open heart surgery and his kidney was removed, the learned Presiding Officer was not at all justified in depriving him of the back wages and continuity of service. Learned counsel criticised the order under challenge by arguing that the learned Single Judge has not, at all, dealt with the appellant's claim for continuity of service.

Shri V.T.M. Prasad, learned counsel for the respondents supported the award and the order under challenge and argued that even though the appellant may have taken treatment in different hospitals, he cannot be absolved of the charge of remaining absent from duty because no evidence was produced before the Labour Court to prove that he had informed the concerned authority about his ailment. He further argued that the Labour Court did not commit any illegality by declining the benefit of continuity of service to the appellant.

We have given serious thought to the entire matter. In our opinion, denial of back wages to the appellant cannot be termed as illegal or vitiated by an error of law apparent on the face of the record because the principle of 'no work no pay' is well recognised and has been applied in large number of judicial precedents of recent times. However, we find substantial merit in the argument of the learned

counsel for the appellant that the denial of continuity of service to his client is totally unjustified and failure of the learned Single Judge to direct his attention to this important aspect has resulted in miscarriage of justice.

A recapitulation of the findings recorded by the Labour Court shows that two months prior to his alleged absence from duty, the appellant had applied for leave on medical grounds and took treatment in different hospitals. This is evinced from the discharge report issued by Osmania General Hospital and medical certificates issued by Yashoda Hospital and Asian Gastro Enterolgy, which were produced by the appellant before the Labour Court. The learned Presiding Officer considered the evidence produced by the appellant and held that even though he failed to comply with clause 11 of the APSRTC Employees (Leave) Regulations, the appellant cannot be held guilty of grave misconduct so as to warrant imposition of the penalty of removal from service. In view of this finding, the learned Presiding Officer was not at all justified in denying the benefit of continuity of service to the appellant, who had already suffered on account of arbitrary and unjust action taken by the disciplinary authority. We are sure that if the learned Single Judge had considered this aspect of the matter, he would have definitely come to the conclusion that the direction given by the learned Presiding Officer that the intervening period be treated as 'not on duty' was totally unjust.

In the result, the appeal is partly allowed. The order of the learned Single Judge is set aside. Award dated 27.12.2005 passed by Labour Court-II, Hyderabad is modified and it is directed that the period between the date of the appellant's removal from service and the award shall be treated as duty. However, he shall not be entitled to monetary benefits like wages etc., for the said period.

As a sequel to disposal of the writ appeal, W.A.M.P.No. 617 of 2007 filed by the appellant for interim relief is disposed of as

infructuous.

G.S. SINGHVI, CJ

C.V. NAGARJUNA REDDY, J

27.04.2007
ksld

---

[1] (2006) 1 SCC 479
[2] (2006) 1 SCC 63
[3] AIR 2003 SC 3044